United States Department of Labor
Employees' Compensation Appeals Board

L.E., Appellant	)	
and	)	**Docket No. 19-0043**
	)	**Issued: April 26, 2019**
DEPARTMENT OF VETERANS AFFAIRS, ST. ALBANS HARBOR HEALTHCARE SYSTEM, Jamaica, NY, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On October 8, 2018 appellant, through counsel, filed a timely appeal from an August 30, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.; see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

[2] 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has met his burden of proof to establish medical conditions causally related to the accepted November 14, 2017 employment incident.

FACTUAL HISTORY

On December 14, 2017 appellant, then a 62-year-old cook, filed a traumatic injury claim (Form CA-1) alleging that on November 14, 2017 he sustained groin and left leg, knee, thigh, and foot injuries when pushing a loaded food truck weighing approximately 400 to 500 pounds while in the performance of duty. On the reverse side of the claim form the employing establishment indicated that he stopped work on the date of injury. It also indicated that appellant was not injured in the performance of duty, and noted that he developed pain and swelling in his left leg while at home.

In a report dated November 15, 2017, Dr. Santhosh Alex, an internal medicine specialist, diagnosed left-sided sciatica and simple bruising.

In a duty status report (Form CA-17) dated December 4, 2017, Dr. Yvonne Venzen, Board-certified in internal medicine, diagnosed groin pain radiating from left knee due to sciatica. She indicated that appellant could resume work with restrictions.

In a separate Form CA-17 dated December 4, 2017, Dr. Carlisle L. St. Martin, a neurology specialist, diagnosed lumbar herniated disc, left tear, and gout. He noted that appellant was not to return to work.

On December 4, 2017 the employing establishment issued an authorization for examination and/or treatment (Form CA-16) to Dr. St. Martin.

In a development letter dated December 19, 2017, OWCP requested additional factual and medical evidence in support of appellant's claim. It advised him of the type of factual and medical evidence needed and provided a factual questionnaire for his completion. OWCP afforded appellant 30 days to submit the requested evidence.

OWCP continued to receive medical evidence. In a magnetic resonance imaging scan report dated November 17, 2017, Dr. James R. McCleavey, a Board-certified diagnostic radiologist, indicated impressions of swollen subcutaneous tissue, mild hindfoot valgus, mild tenosynovitis of the posterior tibialis tendon and of the peroneus brevis, tibiotalar effusion, and longitudinal interstitial short segment tear of the plantar aponeurosis at the calcaneal base attachment.

In the attending physician's report portion of a Form CA-16 dated December 13, 2017, Dr. St. Martin diagnosed lumbar herniated disc. He indicated that appellant was unable to resume work.

By letter dated January 11, 2018, the employing establishment controverted appellant's claim, contending that his diagnosed conditions were not shown to be a direct result of or aggravated by the employment environment or factors of his federal employment.

In duty status reports (Form CA-17) dated January 8 and 22, 2018, Dr. St. Martin again diagnosed lumbar herniated disc, left tear, and gout. He also noted that appellant was not to resume work.

By decision dated January 26, 2018, OWCP denied appellant's claim finding that the evidence of record was insufficient to establish that his medical conditions were causally related to the accepted November 14, 2017 employment incident.

On February 9, 2018 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

In reports dated November 17, 18, 22, and 28 and December 4, 6, and 13, 2017, and January 8, 16, 20, and 26, 2018, received by OWCP on June 4, 2018, Dr. St. Martin diagnosed lumbar spine low back pain with multiple herniated nucleus pulposus and left knee and left ankle derangement. He noted that appellant was totally disabled from work.

In a report dated February 12, 2018, Dr. St. Martin added a diagnosis of left hip derangement.

In a report dated March 1, 2018, Dr. St. Martin added a diagnosis of a left acetabular labrum tears along with left-sided hip bursitis. He noted that appellant's injury occurred at work because appellant was healthy before the November 14, 2017 employment incident.

A telephonic hearing was held before an OWCP hearing representative on July 6, 2018.

By decision dated August 30, 2018, OWCP's hearing representative affirmed the January 26, 2018 decision finding that appellant had not submitted sufficient medical evidence in which a physician had indicated that he sustained an injury causally related to the accepted November 14, 2017 employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was filed within the applicable time limitation, that an injury was sustained while in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.[4] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.[5]

[3] *Id.*

[4] *J.P.*, Docket No. 18-1165 (issued January 15, 2019); *Alvin V. Gadd*, 57 ECAB 172 (2005); *Anthony P. Silva*, 55 ECAB 179 (2003).

[5] *J.P., id; see Elizabeth H. Kramm (Leonard O. Kramm)*, 57 ECAB 117 (2005); *Ellen L. Noble*, 55 ECAB 530 (2004).

In order to determine whether an employee sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components, which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident, which is alleged to have occurred.[6] The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.[7]

To establish causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence sufficient to establish such causal relationship.[8] The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment incident identified by the employee.[9]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish medical conditions causally related to the accepted November 14, 2017 employment incident.

Appellant submitted a series of reports from Dr. St. Martin in support of his claim. In most of these reports, Dr. St. Martin diagnosed lumbar spine low back pain with multiple herniated nucleus pulposus and left knee and left ankle derangement, left hip derangement, and left acetabular labrum tears along with left-sided hip bursitis. However, he did not opine as to the cause of appellant's diagnoses and the relationship to the accepted November 14, 2017 employment incident. The Board has held that a report is of no probative value if it does not contain an opinion on causal relationship.[10] Therefore, these reports from Dr. St. Martin are insufficient to establish the claim.

In his March 1, 2018 report, Dr. St. Martin opined that appellant's injury occurred at work because appellant was healthy before the November 14, 2017 employment incident. However, the mere fact that a condition manifests itself or is discovered after an employment incident is insufficient to establish causal relationship between the condition and the incident.[11] Temporal

[6] *R.E.*, Docket No. 17-0547 (issued November 13, 2018); *David Apgar*, 57 ECAB 137 (2005); *Delphyne L. Glover*, 51 ECAB 146 (1999).

[7] *M.H.*, Docket No. 18-1737 (issued March 13, 2019); *R.E., id.*

[8] *T.H.*, Docket No. 18-1736 (issued March 13, 2019); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[9] *K.V.*, Docket No. 18-0723 (issued November 9, 2018); *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

[10] *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

[11] *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

relationship alone will not suffice for purposes of establish causal relationship.[12] Additionally, a mere conclusion without necessary rationale explaining why the physician believes that a claimant's accepted employment incident resulted in the diagnosed condition is insufficient to establish appellant's claim.[13] Dr. St. Martin did not provide a medical opinion based upon a complete factual and medical background, and supported by medical rationale, which explained causal relationship between the diagnosed conditions and the accepted employment incident.[14] His reports are therefore insufficient to establish appellant's claim.

OWCP also received a report containing the results of diagnostic testing dated November 17, 2017 from Dr. McCleavey which noted multiple diagnosed conditions. However, diagnostic studies lack probative value as they do not address whether the employment incident caused any of the diagnosed conditions.[15]

Herein, the record lacks rationalized medical evidence establishing causal relationship between the accepted November 14, 2017 employment incident and appellant's diagnosed medical conditions. Thus, the Board finds that appellant has not met his burden of proof.[16]

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish medical conditions causally related to the accepted November 14, 2017 employment incident.

[12] *Id.*

[13] *D.O.*, Docket No. 18-0086 (issued March 28, 2018).

[14] *Supra* note 9.

[15] *J.S.*, Docket No. 17-1039 (issued October 6, 2017).

[16] A properly completed CA-16 form authorization may constitute a contract for payment of medical expenses to a medical facility or physician, when properly executed. The form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. The period for which treatment is authorized by a Form CA-16 is limited to 60 days from the date of issuance, unless terminated earlier by OWCP. *See* 20 C.F.R. § 10.300(c); *P.R.*, Docket No. 18-0737 (issued November 2, 2018); *N.M.*, Docket No. 17-1655 (issued January 24, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).

ORDER

IT IS HEREBY ORDERED THAT the August 30, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 26, 2019
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board